

AMENDED IN ASSEMBLY JANUARY 4, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 575

Introduced by Assembly Member Torres

February 25, 2009

An act to add Section 647.8 to the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 575, as amended, Torres. Sex offenders: restrictions.

Existing law makes it unlawful for a person who is required to register as a sex offender to reside within 2,000 feet of a public or private school, or park where children regularly gather. Existing law also provides that any person required to register as a sex offender who comes into any school building or upon any school ground without lawful business and written permission is guilty of a misdemeanor.

This bill would make it a misdemeanor for ~~a sex offender~~ *certain high-risk sex offenders*, except in limited instances, to be physically present and delay, linger, or idle about within ~~300~~ *100* feet of a sensitive use site, as defined. For purposes of those provisions, a sensitive use site would include specified places where children gather, including ~~areades~~, bus stops, child care centers, ~~children's retail stores~~, community centers, ~~cultural centers~~, ~~cyber cafés~~, ~~health clubs providing childcare services~~, ~~movie theaters~~, ~~museums~~, sports centers, and schools.

By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 647.8 is added to the Penal Code, to read:
2 647.8. (a) For purposes of this section, the following
3 definitions apply:

4 (1) ~~“Arcade” means any of the following:~~

5 ~~(A) Any establishment frequented by children that provides~~
6 ~~more than five video or electronic games, including computer~~
7 ~~games, that require coins, tokens, or any other form of payment~~
8 ~~to play.~~

9 ~~(B) Any establishment frequented by children providing~~
10 ~~amusement facilities, which include, but are not limited to, pinball~~
11 ~~machines, shooting galleries, or electronic or video type skill~~
12 ~~games.~~

13 ~~(C) Any business frequented by children at which amusement~~
14 ~~rides are offered.~~

15 ~~(D) Any business frequented by children providing a billiard~~
16 ~~room or coin actuated machine including, but not limited to,~~
17 ~~electronic game machines, machines vending any goods, wares,~~
18 ~~or merchandise operated by coins.~~

19 (2)

20 (1) “Bus stop” means a location designated for the regularly
21 scheduled boarding and departing of bus passengers for bus service
22 offered to children attending school or to the general public.

23 (3)

24 (2) “Child” or “children” or “youth” means a person or persons
25 under 18 years of age.

26 (4)

27 (3) “Child care center” means any of the following:

28 (A) A “day care center” as defined in Section 1596.76 of the
29 Health and Safety Code.

30 (B) A “child care and development facility” as defined in Section
31 8208 of the Education Code.

32 (C) A facility that provides nonmedical care and supervision of
33 children, including infants, toddlers, preschoolers, and schoolage

1 children for a period of not less than 24 hours, consecutively, and
2 that is required to be licensed by the State Department of Social
3 Services.

4 (5) “Children’s retail store” means an establishment or place of
5 business dedicating at least 80 percent of floor space to consumer
6 items directed at children, such as children’s toys, clothing, shoes,
7 eyewear, hats, jewelry and fashion accessories, books, hobby or
8 special interest items, games, musical instruments, sporting goods,
9 bicycles, scooters, music, recordings, dance supplies, art and art
10 supplies, candy, and other similar items directed toward children.

11 (6) “Community center” or “cultural center” means a
12 multipurpose meeting or recreational facility, typically consisting
13 of one or more meeting or multipurpose rooms, kitchen, or outdoor
14 barbecue facilities that are available for use by various groups for
15 activities such as meetings, parties, receptions, and dances.

16 (7) “Cyber café” means an establishment frequented by children
17 that provides more than four computers or other electronic devices
18 for access to the Internet, e-mail, video games, or computer
19 software programs, which are networked via LAN or WAN, and
20 that functions as a client/server program and that seeks
21 compensation in any form from users. Cyber café is synonymous
22 with PC café, Internet café, or cyber center.

23 (8) “Health club providing childcare services” means facilities
24 that provide for sport, exercise, and health-related activities, group
25 classes, and personal instruction and training, and childcare for
26 children of patrons while using the facilities. Additional facilities
27 may include a pool, spa, sauna, tennis courts, racquetball or
28 handball courts, and weight and exercise equipment. Additional
29 uses may include retail sales of exercise clothing, accessories, food
30 and beverages, and membership sales. This definition does not
31 include facilities that provide yoga, Pilates, or similar type of studio
32 activities.

33 (9) “Movie theater” means an establishment designed for the
34 showing of motion pictures. Additional uses may include the sale
35 of concession food items and nonalcoholic beverages.

36 (10) “Museum” means public or quasi-public facilities, such as
37 aquariums, arboretums, art exhibitions, botanical gardens, historical
38 sites, and exhibits that can be viewed by the public. Accessory
39 uses include such uses as restaurants, cafeterias, and gift shops.

40 (11)

1 (4) “Nontraditional school” means any of the following:

2 (A) A public or private preschool.

3 (B) A Montessori school.

4 (C) A home school that has filed an affidavit or statement with
5 the Superintendent of Public Instruction for the current year
6 pursuant to Section 33190 of the Education Code and that provides
7 regularly scheduled home schooling to children as an alternative
8 to their attendance at other public or private schools.

9 (D) A school approved by the state as a charter school.

10 ~~(12)~~

11 (5) “Rail station” means a location designated for the regularly
12 scheduled boarding and departing of rail passengers for rail-based
13 transportation service offered to children attending school or to
14 the general public.

15 ~~(13)~~

16 (6) “Sensitive use site” means any location defined in paragraphs
17 (1) to ~~(12)~~ (5), inclusive, and ~~(16) to (20)~~ (9) to (11), inclusive, of
18 this subdivision.

19 ~~(14)~~

20 (7) “Sensitive use site parcel boundary” means the legal
21 boundary of the parcel or parcels occupied by the sensitive use
22 site, regardless of whether the site occupies the entire parcel or
23 any portion thereof.

24 ~~(15) “Sex offender” means any person for whom registration is~~
25 ~~required pursuant to the Sex Offender Registration Act, regardless~~
26 ~~of whether that person is on parole or probation.~~

27 (8) “Sex offender” means a person required to register pursuant
28 to the Sex Offender Registration Act, who has been convicted of
29 an offense under Section 261, 269, 286, 288, or 289 where the
30 victim is a child under the age of 14 years, and who has been
31 placed on intensive and specialized parole supervision pursuant
32 to Section 3008 because the person is deemed to pose a high risk
33 to the public of committing sex crimes, as determined by the
34 State-Authorized Risk Assessment Tool for Sex Offenders, as set
35 forth in Sections 290.04 to 290.06, inclusive.

36 ~~(16)~~

37 (9) “Sports center” means ~~any of the following:~~

38 ~~(A) A~~ a location designed for accommodating sports or
39 recreational activities that is frequented by children, seasonally or
40 otherwise, including, but not limited to, playgrounds, skate parks,

1 baseball fields, basketball courts, tennis courts, soccer fields,
2 swimming facilities, karate studios, dance or ballet studios, and
3 other sports or recreational facilities frequented by children
4 regardless of whether that location is publicly or privately owned.
5 Facilities open to members of a common interest development or
6 homeowners association in which that facility exists shall be
7 considered a sensitive use site. All other facilities open to the
8 general public not otherwise addressed in this definition of *sports*
9 *center* that are located in residential zones not open to the general
10 public shall not be included in this definition of sports center.

11 ~~(B) A facility frequented by children that provides a wide range~~
12 ~~of recreational activities including, but not limited to, roller or ice~~
13 ~~rinks, skateboard, miniature golf, golf course, golf driving range,~~
14 ~~batting cages, go carts, and rock climbing. Additional uses at the~~
15 ~~facility, including food concessions and retail sales of items related~~
16 ~~to the activity, such as clothing and accessories and sundries, are~~
17 ~~intended to be part of the definition and scope of sports center.~~
18 ~~Facilities open to members of a common interest development or~~
19 ~~homeowners association in which such a facility exists shall be~~
20 ~~considered a sensitive use site. Facilities located within residential~~
21 ~~zones and not open to the general public shall not be included in~~
22 ~~the definition of sports center.~~

23 ~~(17) “Studio” means small-scale facilities that typically provide~~
24 ~~for the teaching or tutoring of children including, but not limited~~
25 ~~to, the arts, music, drama, production, rehearsal, dance instruction,~~
26 ~~photography instruction, and the processing of photographs~~
27 ~~produced by users of the studio facilities, martial arts training, or~~
28 ~~gymnastics instruction. This definition does not include larger~~
29 ~~facilities such as a learning center.~~

30 ~~(18)~~

31 ~~(10) “Traditional school” means any of the following:~~

32 (A) A private school that provides education from kindergarten
33 through grade 12 and that is not affiliated with a local school
34 district.

35 (B) A public school providing instruction from kindergarten
36 through grade 12.

37 (C) A community college, technical school, public or private
38 college, university, or professional school granting associate arts
39 degrees, certificates, and undergraduate and graduate degrees.

1 ~~(19) “Tutoring center” or “learning center” means either of the~~
2 ~~following:~~

3 ~~(A) A location at which a public or private organization offers~~
4 ~~regularly scheduled tutoring and or educational instruction to~~
5 ~~children for purposes of supplementing the regular school~~
6 ~~instruction of children.~~

7 ~~(B) An establishment that provides for the teaching or tutoring~~
8 ~~of schoolaged children in general or specific academic subjects~~
9 ~~on an individual basis or in groups, and that is not affiliated with~~
10 ~~a public or private school. These services are intended to~~
11 ~~supplement normal school teachings and are not intended to replace~~
12 ~~or substitute for public or private school.~~

13 ~~(20)~~

14 ~~(11) “Youth center” means a location at which a public or~~
15 ~~private organization provides mentorship, educational, or~~
16 ~~recreational programs to children on a regularly scheduled basis~~
17 ~~for purposes of social, educational, artistic, athletic, or community~~
18 ~~enrichment. Examples of youth centers include, but are not limited~~
19 ~~to, Boys and Girls Club facilities and YMCA facilities.~~

20 ~~(b) Except as provided in subdivision (f) (e), it is unlawful for~~
21 ~~any sex offender, as defined in paragraph (8) of subdivision (a),~~
22 ~~to be physically present and delay, linger, or idle about within 300~~
23 ~~100 feet of any sensitive use site, as defined in subdivision (a).~~

24 ~~(c) In determining whether a particular point is within 300 100~~
25 ~~feet of any sensitive use site, distances shall be measured in a direct~~
26 ~~straight line from any point of the boundary of the legal parcel on~~
27 ~~which the sensitive use site is located.~~

28 ~~(d) A violation of this section is a misdemeanor, punishable by~~
29 ~~imprisonment in the county jail not exceeding one year, or by a~~
30 ~~fine not exceeding one thousand dollars (\$1,000), or by both~~
31 ~~imprisonment and a fine. A person is guilty of a separate offense~~
32 ~~for each day during which a violation occurs.~~

33 ~~(e) This section applies to every person who has been convicted~~
34 ~~of an offense requiring registration pursuant to the Sex Offender~~
35 ~~Registration Act, regardless of the person’s probationary status,~~
36 ~~parole status, or dates of conviction or release from jail, prison, or~~
37 ~~confinement.~~

38 ~~(f)~~

39 ~~(e) The provisions of this section shall not apply in any of the~~
40 ~~following instances:~~

1 (1) The sex offender is a minor and he or she is present within
2 ~~300~~ 100 feet of a sensitive use site while accompanied by a parent
3 or legal guardian.

4 (2) The sex offender is present within~~300-feet~~ 100 feet of a
5 sensitive use site only because he or she is traveling, whether on
6 foot, by car, or by other means to or from a destination~~beyond the~~
7 ~~300-foot~~ *outside of the 100-foot* area, and his or her presence within
8 the ~~300-foot~~ 100-foot area is temporary and incidental to that travel.

9 (3) The sex offender is present within~~300~~ 100 feet of a sensitive
10 use site only because he or she is accompanying a related minor
11 to that site and only for so long as is necessary to provide care or
12 supervision to the related minor. As used in this paragraph, “related
13 minor” means a minor to whom the sex offender is the legal parent
14 or guardian.

15 (4) The sex offender reasonably does not know that he or she
16 is present within~~300~~ 100 feet of a sensitive use site, provided that
17 he or she immediately takes steps to move~~beyond that 300-foot~~
18 *outside of that 100-foot* area upon learning or being notified of the
19 existence of the sensitive use site.

20 (5) The sex offender is exercising First Amendment rights
21 protected by the United States Constitution, such as the free
22 exercise of religion at a place of worship or freedom of speech or
23 the right of assembly at a traditional public forum.

24 (6) The sex offender is present within~~300~~ 100 feet of a sensitive
25 use site only because he or she is traveling, whether on foot, by
26 car, or by other means, to or from his or her place of employment
27 for employment purposes.

28 (7) The sex offender is present within~~300~~ 100 feet of a sensitive
29 use site only because he or she is traveling, whether on foot, by
30 car, or by other means, to or from a medical facility, such as a
31 hospital or doctor’s office for a legitimate and verifiable medical
32 appointment.

33 SEC. 2. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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